

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

WAYNE BERRY,

Plaintiff,

vs.

DEUTSCHE BANK TRUST COMPANY
AMERICAS (F.A. BANKERS TRUST
COMPANY) AND JP MORGAN CHASE
BANK IN THEIR SEPARATE
CAPACITIES AND AS AGENTS FOR THE
PRE AND POST-PETITION LENDERS OF
FLEMING COMPANIES, INC.; GENERAL
ELECTRIC CAPITAL CORPORATION;
C&S Wholesale Grocers, Inc., DOES 1 TO
200.

Defendants.

) No. 07-CV-07634 (PKC) (AJP)

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DECLARATION OF WAYNE BERRY

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I, Wayne Berry, am the Plaintiff in this case and hereby declare under penalty of perjury that the following is true and accurate to the best of my knowledge and belief. If called upon to testify regarding the matters contained herein, I am competent and willing to do so.

1. At the time that Fleming was sued in the first and second Hawaii cases, it had a license to use the works that are the subject of this case of the works identified in the instant First Amended Complaint as Prepaid vendor invoice definition for Crystal report.txt TX-5-268-865, SQL export queries, TXu-11-277-726, FCS1993 Terminal Reporting System, version 1.0, TXu-1-302-622, FCS 1993, crystal reports, pallet tags, version 1.0, TXu-1-3-2-623, Crystal report receiving report, version 1.0, Txu-1-302-624, TXu-1-302-625 to Txu-1-302-627; Txu-1-340-295 to 302.

Executed, Jupiter Florida, 9/18/2007.

Wayne Berry
WAYNE BERRY